

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHAN H.A. GELISSEN

Appeal No. 2002-0340
Application No. 09/094,827

ON BRIEF

Before THOMAS, KRASS and GROSS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 7-10.

The invention is directed to the delivery of computer application programs to customers who use different program execution platforms.

An application program is created using the instruction set and data set of a pre-specified abstract machine in order to enable execution of that application program on a

plurality of different data processing platforms that are instances of the pre-specified abstract machine. The same application program then is executed by the various different data processing platforms using a multiplatform interpreter located at each platform. As a result, only one application program and only one multiplatform interpreter needs to be prepared and delivered to the customers. The same application program is executed on any one of the various different platforms using the same multiplatform interpreter.

Independent claim 7 is reproduced as follows:

7. A method for enabling execution of a same application program on a first data processing platform and on a second data processing platform different from the first data processing platform using a multiplatform interpreter, wherein:

the first and second data processing platforms each comprise processing means and resource facilities satisfying predetermined quantitative minimum requirements of a pre-specified abstract machine having a predetermined instruction set and a predetermined data set;

the first and second data processing platforms are respective instances of the pre-specified abstract machine; and

said application program is based on said predetermined instruction and data sets; and

the method comprises the steps of:

supplying to the first or to the second data processing platform via a telecommunications channel at least one of the application program and the multiplatform interpreter; and

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enabling the supplied data processing platform to use the multiplatform interpreter to interpret the application program for execution on the supplied data processing platform.

The examiner relies on the following references:

Koizumi et al. (Koizumi)	5,586,323	Dec. 17, 1996
Choudhury et al. (Choudhury)	5,509,074	Apr. 16, 1996
Skidmore	5,488,714	Jan. 30, 1996

Claims 7-10 stand rejected under 35 U.S.C. §103 as unpatentable over either one of Skidmore or Koizumi in view of Choudhury.

A rejection of claim 7 under 35 U.S.C. §112 has been withdrawn by the examiner and is not before us on appeal.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

At the outset, we note that, in accordance with appellant's grouping of the claims, at page 4 of the brief, all claims will stand or fall together. Accordingly, we will focus on independent claim 7.

In rejecting claims under 35 U.S.C. §103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the

examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teachings, suggestions or implications in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

It is the examiner's position that Skidmore discloses the claimed invention except for the features of receiving data via a telecommunication channel and having an interpreter, as claimed. However, the examiner cites Choudhury, specifically column 1, lines 35-61, as teaching the enablement of data needed for interpreting a program to be transferred along with the data. The examiner concludes that it would have been

obvious to download a program needed for interpreting data along with the data in order to ensure that the system receiving the data has the interpreter necessary for utilizing the data. While the examiner points out that Choudhury does not specifically indicate that the interpreter transferred with the data is a multiplatform interpreter, the examiner concludes that it would have been obvious to transfer a multiplatform interpreter to a system for decrypting the data that is transferred from a different system in order to make it available on the receiving system. The examiner contends that it would have been obvious “to ensure Compatibility between the two systems to ensure That transferred data is readily available for use On the receiving system...” (Final Rejection-page 3).

It is our view that the examiner’s rationale falls far short of establishing a prima facie case of obviousness of the instant claimed subject matter in view of Skidmore and Choudhury.

In particular, the examiner has found obvious, without any specific teaching or suggestion in any of the applied references, a crucial part of appellant’s claimed invention. That is, appellant’s use of a “multiplatform interpreter” permits delivery of the same application program, created for an abstract machine, to different platforms and interpretation of this same application program at different platforms by using the same

multiplatform interpreter. This avoids the need for multiple versions of the application program or the interpreter. It is this use of a single version of the interpreter and a single version of the program, while distributing the interpreter and the program to more than one platform, which appellant asserts to distinguish over the conventional approach of delivering to each platform a platform specific version of the application program. Yet, with no suggestion of a “multiplatform interpreter” in the applied references, and an explicit admission by the examiner that Choudhury does not indicate that the interpreter therein is a multiplatform interpreter, the examiner asserts that it would have been obvious to transfer a multiplatform interpreter to a system for decrypting the data that is transferred from a different system in order to make it available on the receiving system.

Such an unsupported allegation, especially when the examiner is asserting the obviousness of the very core of appellant’s claimed invention, is an improper basis for concluding obviousness of the claimed subject matter within the meaning of 35 U.S.C. §103.

In fact, appellant argues, at page 8 of the brief, that the interpreter of the prior art is not a multiplatform interpreter and that it “isn’t even clear that a multiplatform interpreter even exists in the prior art.” In response, the examiner contends that item

215 in Figure 3 of Choudhury “functions as a multi platform interpreter (one version) for systems accessing it’s [sic, its] data, see col. 3 line 66-col. 4 line 12. This feature also inherently indicates that application and data is specifically created for the specific machine to enable interpretation by the various (multi) platforms” (Answer-page 4).

We have reviewed the indicated portions of Choudhury. We not only fail to find the alleged teaching of anything functioning as the claimed “multiplatform interpreter,” but we fail to find anything within Choudhury’s system for protecting electronically published materials that would have led the artisan to modify anything in Skidmore that would result in the instant claimed subject matter.

Moreover, claim 7 requires a “pre-specified abstract machine having a predetermined instruction set and a predetermined data set,” wherein first and second data processing platforms are instances of the pre-specified abstract machine. It is unclear to us where such a limitation is suggested in the applied references. The examiner’s response is that the “abstract machine feature is considered inherent” (Final Rejection-page 2). This is insufficient to demonstrate obviousness when the appellant argues, and thus challenges, this assertion. Frankly, we do not understand how the examiner finds the claimed abstract machine feature to be “inherent” in Skidmore.

For at least the reasons supra, we will not sustain the rejection of claims 7-10 under 35 U.S.C. §103 over Skidmore and Choudhury.

We also will not sustain the rejection of claims 7-10 under 35 U.S.C. §103 over Koizumi and Choudhury for similar reasons.

Koizumi seems more relevant to the instant claimed subject matter than the other two applied references in that it discloses the translation of a source program into an abstract object program including an abstract machine instruction sequence. It also discloses an installer for converting the abstract object program into a machine language program of a target computer. However, as pointed out by appellant, at page 9 of the brief, Koizumi's installers are platform specific, rather than being the multiplatform interpreter claimed. Thus, if a customer's platform is changed, a new installer will be required. This, of course, is much different than the instant claimed invention wherein a single multiplatform interpreter is used.

Furthermore, again, as pointed out by appellant, at page 10 of the brief, the installer of Koizumi does not appear to be an interpreter and, certainly is not a multiplatform interpreter, as claimed. According to Koizumi (column 1, lines 26-35), an interpreter is a program which, along with a language is adapted to interpret and execute an intermediate language program on a target computer. An installer, however, only translates an abstract object program into machine code. Accordingly, it appears that Koizumi's installers are not interpreters. So, to the extent that the examiner relies on Koizumi's installers as comprising the claimed multiplatform "interpreter," this finding is, in our view, erroneous. Therefore, Koizumi cannot be said

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to disclose or suggest the claimed multiplatform interpreter. Choudhury is of no help in this regard.

Thus, for at least these reasons, we will not sustain the rejection of claims 7-10 under 35 U.S.C. §103 over Koizumi and Choudhury.

The examiner's decision is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ERROL A. KRASS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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